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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/770,960 | 01/26/2001 | Jo Ann H. Squier | 10247 | 7021 |

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EXAMINER

SIMONE, CATHERINE A

ART UNIT PAPER NUMBER

1772

DATE MAILED: 06/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/770,960

Applicant(s)

SQUIER ET AL.1

Examiner

Catherine Simone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 27-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/3/05 has been entered.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-23 and 27-29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-34 of U.S. Patent No. 6,787,217.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims and specification of U.S. Patent 6,787,217 are broad enough to encompass or include that which is recited in the present patent application.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-7, 10-21 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swan et al. (4,965,123) in view of Dronzek (6,517,664).

Regarding claims 1 and 27, Swan et al. discloses a thermoplastic label comprising a first skin layer comprising polypropylene or polyethylene and a first cavitating agent, wherein the first skin layer has a first side and a second side, and the first skin layer is cavitated (see col. 8, lines 5-15 and 34-38); and an adhesive on the first side of the first skin layer (see col. 9, lines 15-39); a first tie layer comprising polypropylene or polyethylene and a second cavitating agent, wherein the first tie layer has a first side and a second side, the first tie layer is cavitated, and the first side of the first tie layer is adjacent to the second side of the first skin layer (see col. 3, lines 36-40 and 57-67 and col. 12, lines 35-64); a core layer comprising polypropylene or polyethylene and a third cavitating agent, wherein the core layer has a first side and a second side, the core layer is cavitated, and the first side of the core layer is adjacent to the second side of the first tie layer (see col. 4, lines 28-38 and col. 8, lines 34-38); and a second skin layer comprising a polyolefin, wherein the second skin layer has a first side and a second side, the second skin layer is not cavitated, and the second skin layer is on the second side of the core layer (see col. 6, lines 23-25). However, Swan et al. fails to teach a cold glue adhesive. Dronzek teaches that it is old and well-known in the art to apply a cold glue adhesive to a cavitated

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polymer layer (see col. 4, lines 62-67) for the purpose of providing an enhanced bond between the polymeric label and the container surface and to also impart stiffness to the dried label on the container surface. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have applied a cold glue adhesive to the first side of the cavitated polymer skin layer in Swan et al. as suggested by Dronzek in order to provide an enhanced bond between the polymeric label and the container surface and to also impart stiffness to the dried label on the container surface.

Regarding claim 2, the first skin layer comprises polypropylene and has a thickness of at least about 0.3 mil (see col. 7, lines 4-7 and col. 8, lines 34-38 and col. 9, line 10). Regarding claim 3, the first skin layer comprises polyethylene (see col. 8, lines 34-38). Regarding claims 4 and 5, the core layer and first tie layer comprise polypropylene (see col. 8, lines 34-38). Regarding claim 6, the first tie layer has a thickness of at least about 0.3 mil (see col. 7, lines 4-7). Regarding claim 7, the second skin layer comprises polypropylene (see col. 8, lines 34-38). Regarding claim 10, each of the first skin layer, first tie layer, core layer, and second skin layer comprises polyethylene (see col. 8, lines 34-38). Regarding claim 11, the first skin layer comprises at least about 15% by weight of the thermoplastic label (see col. 11, lines 4-5). Regarding claim 12, the first, second and third cavitating agent are independently selected from the group consisting of calcium carbonate, polybutylene terephthalate, polyamides, acrylic resins, acetals, hollow or solid preformed glass spheres, metal beads, metal spheres, ceramic spheres (see col. 6, lines 41-45 and 62-65 and col. 8, lines 12-15). Regarding claim 13, the first cavitating agent comprises calcium carbonate (see col. 8, lines 12-15). Regarding claims 14 and 15, the label has a thickness of from about 3 mils to about 5 mils and from about 1 mil to about

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10 mils (see col. 7, lines 4-7 and col. 9, line 10). Regarding claim 16, the label is biaxially oriented (see col. 11, line 18). Regarding claims 17-19, the first cavitating agent comprises at least about 25%, 35% and 50% by weight of the first skin layer (see col. 8, lines 21-24).

Regarding claim 20, the first skin layer comprises homopolymer polypropylene (see col. 8, lines 34-38). Regarding claim 21, the first skin layer comprises homopolymer polypropylene (see col. 8, lines 34-38) and the first cavitating agent comprises at least about 25% by weight of the first skin layer (see col. 8, lines 21-24).

6. Claims 8, 9, 22, 23, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swan et al. (4,965,123) in view of Dronzek (6,517,664) and in view of Marotta et al. (5,888,640).

Swan et al. discloses a thermoplastic label comprising a first skin layer comprising polypropylene or polyethylene and a first cavitating agent, wherein the first skin layer has a first side and a second side, and the first skin layer is cavitated (see col. 8, lines 5-15 and 34-38); an adhesive on the first side of the first skin layer (see col. 9, lines 15-39) to adhere the label to the surface of a container; a first tie layer comprising polypropylene or polyethylene and a second cavitating agent, wherein the first tie layer has a first side and a second side, the first tie layer is cavitated, and the first side of the first tie layer is adjacent to the second side of the first skin layer (see col. 3, lines 36-40 and 57-67 and col. 12, lines 35-64); a core layer comprising polypropylene or polyethylene and a third cavitating agent, wherein the core layer has a first side and a second side, the core layer is cavitated, and the first side of the core layer is adjacent to the second side of the first tie layer (see col. 4, lines 28-38 and col. 8, lines 34-38); and a second skin layer comprising a polyolefin, wherein the second skin layer has a first side and a second side,

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the second skin layer is not cavitated, and the second skin layer is on the second side of the core layer (see col. 6, lines 23-25). However, Swan et al. fails to disclose a second tie layer comprising polypropylene or polyethylene, wherein the second tie layer is not cavitated and is adjacent to the second side of the core layer and the first side of the second skin layer and further a metal layer on the second side of the second skin layer. Marotta et al. teaches that it is old and well-known in the analogous art to have a tie layer comprising polypropylene adjacent a skin layer and a core layer (see col. 6, lines 12-14 and 20) and a metal layer on the second side of a second skin layer (see col. 8, lines 31-32) for the purpose of producing a biaxially oriented thermoplastic label with the ability to shrink to fit the contours of the container without the development of any noticeable crazing of the metal. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the label in Swan et al. with a second non-cavitated tie layer comprising polypropylene adjacent to the second side of the core layer and adjacent the first side of the second skin layer and a metal layer on the second side of the second skin layer as suggested by Marotta et al. in order to produce a biaxially oriented thermoplastic label with the ability to shrink to fit the contours of the container without the development of any noticeable crazing of the metal.

Response to Arguments

7. Applicant's arguments with respect to claims 1-23 and 27-29 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (571)272-1501.

The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Catherine A. Simone
Examiner
Art Unit 1772
June 14, 2005


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

6/20/05